



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35590]

Illinois Railway, L.L.C., Chicago, Central & Pacific Railroad Company and Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific—Joint Relocation Project Exemption—in Rockford, Ill.

On December 5, 2012, Illinois Railway, L.L.C. (IR), Chicago, Central & Pacific Railroad Company (CC&P)¹, and Dakota, Minnesota & Eastern Railroad Corporation d/b/a Canadian Pacific (CP) (collectively, applicants) jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(5) to participate in a joint project involving the relocation of certain tracks by IR and CC&P over which they currently operate, or have authority to operate, in the City of Rockford, Winnebago County, Ill. (the City).²

The purpose of the joint relocation project is to facilitate the City's removal and replacement of the Morgan Street Bridge (the Bridge), an old highway bridge that crosses over the Rock River in the City. To allow for the City's bridge replacement project to proceed, IR and CC&P have agreed to realign their trackage and interchange points within the project area, including the removal of IR's tracks located beneath the Bridge.

According to applicants, the relocation project involves seven components. First, IR will acquire limited overhead trackage rights from CC&P over CC&P's trackage

¹ IR is a subsidiary of OmniTRAX, Inc. CC&P is an indirect subsidiary of Canadian National Railway Company (CN) and is operated as part of the CN rail system.

² Two redacted trackage rights agreements between IR and CC&P, were filed with the notice of exemption. The unredacted versions were filed under seal along with a motion for protective order, which will be addressed in a separate decision.

between CCP milepost 85.75 and the connection with CP's trackage at or near CCP milepost 86.85, a distance of approximately 1.1 miles. In addition to overhead trackage rights, IR explains that it will have the right to enter and exit its main line west of the diamond at CCP milepost 85.75. IR will also have the right to enter and exit its former main line track east of the diamond at CCP milepost 85.65 (including between CCP milepost 85.65 and CCP milepost 85.00 for headroom) to enable IR to continue serving the shipper, Joseph Behr & Sons, Inc. (Behr). These trackage rights will allow IR to use the CC&P route across the Rock River and existing rights over CP's line to access IR's yard at South Rockford. Second, CC&P will acquire limited overhead and local trackage rights over IR trackage between IR milepost 22.54 and IR milepost 21.90, a distance of approximately 0.64 miles to enable CC&P to continue serving the shipper, Accuride Wheel End Solutions, formerly Gunitite Foundries (Gunitite). Third, a new connecting track will be constructed west of the diamond at or near CCP milepost 85.75 to facilitate IR's use of its trackage rights and to facilitate CC&P's use of its trackage rights. Fourth, a new connecting track connecting CC&P's mainline and the former IR mainline north of the diamond will be constructed east of the diamond at or near CCP milepost 85.65 to facilitate IR's use of its trackage rights to continue serving Behr. Fifth, IR will remove the diamond and its trackage on either side of the diamond between the two connecting tracks and between IR milepost 23.05 (approximately 150 feet south of the center line of Morgan Street) to IR milepost 23.45 (at the north end of IR's Rock River bridge). Sixth, CC&P will remove certain industrial lead track south of the diamond (located parallel to the IR's line) currently used by CC&P to serve Gunitite. Seventh, CP will discontinue its

overhead trackage rights over IR trackage between IR milepost 22.54 and IR milepost 23.5. According to applicants, these trackage rights through this area have been relocated to the CC&P route.

Applicants state that, once the relocation project is completed, IR will quitclaim to the City IR's right-of-way that consists of a distance of 750 feet north of the centerline of Morgan Street and 150 feet south of the centerline of Morgan Street.

According to applicants, the relocation project will provide a number of public and private benefits such as: (a) enhanced public safety through the closing of the existing public highway-rail grading crossings and the upgrading of five existing highway-rail grade crossings; (b) improved railroad safety and decreased maintenance costs for the railroads through the removal of the IR-CC&P diamond south of the Bridge; and (c) a safer and more suitable highway bridge which will support a Class II truck route.

Applicants state that the proposed joint relocation project will not disrupt service to shippers, nor will it expand IR's or CC&P's service into a new territory or alter the existing competitive situation. The two shippers, Behr and Gunitite, will continue to receive service. CC&P will continue to have access to Gunitite via the new connecting track west of the former diamond and the CC&P trackage rights. IR will continue to have access to Behr via the new connecting track east of the former diamond and its trackage rights.

The Board will exercise jurisdiction over the abandonment, construction, or sale components of a relocation project, and require separate approval or exemption, only

where the removal of track affects service to shippers or the construction of new track or transfer of existing track involves expansion into new territory. See City of Detroit v. Canadian Nat'l Ry., 9 I.C.C.2d 1208 (1993), aff'd sub nom. Detroit/Wayne Cnty. Port Authority v. ICC, 59 F.3d 1314 (D.C. Cir. 1995); Flats Indus. R.R. & Norfolk S. Ry.—Joint Relocation Project Exemption—in Cleveland, Ohio, FD 34108 (STB served Nov. 15, 2001). Line relocation projects may embrace trackage rights transactions such as those involved here. See Detroit, Toledo & Ironton R.R.—Trackage Rights—Between Washington Court House & Greggs, Ohio—Exemption, 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components of this relocation project require no separate approval or exemption because the relocation project will not disrupt service to shippers, expand IR's or CC&P's service into a new territory, or alter the existing competitive situation, and thus, this joint relocation project qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in Norfolk and Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease and Operate-California Western Railroad, 360 I.C.C. 653 (1980).

The transaction may be consummated on or after January 4, 2013, the effective date of the exemption (30 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the

effectiveness of the exemption. Petitions for stay must be filed no later than December 28, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35590, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on applicants' representatives: Karl Morell, Ball Janik LLP, 655 Fifteenth Street, N.W., Suite 225, Washington, DC 20005, (IR's representative); William C. Sippel, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606 (CC&P's representative); and W. Karl Hansen, Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402 (CP's representative).

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: December 17, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig

Clearance Clerk

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